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Supreme Court, U.S.
FILED
JUL 28 1994
OFFICE OF THE CLERK

No. 93-1973

In The

Supreme Court of the United States

October Term, 1994

MARJORIE H. ECKARD,

Petitioner,

v.

WILLIAM E. ECKARD,

Respondent.

On Petition For Writ Of Certiorari To The Court Of Appeals Of Maryland

RESPONDENT'S BRIEF IN OPPOSITION TO PETITION FOR WRIT OF CERTIORARI

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RESTATEMENT OF QUESTIONS PRESENTED

1. Does the decision of the state court in *Eckard v. Eckard*, 333 Md. 531, 636 A.2d 455 (1994), rest on an adequate and independent state ground or does it involve the resolution of any federal question, or the application of federal law, so as to warrant the exercise by this Court of its jurisdiction by writ of certiorari?

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Respondent, William E. Eckard, hereby opposes the Petition for Writ of Certiorari to review the judgment of the Court of Appeals of Maryland in the case of *Eckard v. Eckard*, 333 Md. 531, 636 A.2d 455 (1994).

STATEMENT OF THE CASE

The Respondent accepts the Petitioner's description of the course of proceedings in the Maryland courts, contained in the Petitioner's Statement of the Case.

REASONS FOR DENYING THE WRIT

The Decision of the Court of Appeals of Maryland in the Case of *Eckard v. Eckard*, 333 Md. 531, 636 A.2d 455 (1994) which Petitioner Seeks to Review Herein by Certiorari, Rests on an Adequate and Independent State Ground, Decided No Question of Federal Law, Constitutional or Statutory, nor Has it Decided a Federal Question Conflicting with the Decisions of this Court; *Ergo*, Jurisdiction to Review it is Lacking.

28 U.S.C., § 1257, provides in pertinent part that final judgments or decrees rendered by the highest court of a state may be reviewed by this Court:

(a) where the validity of a treaty or statute of the United States is drawn in question, or

(b) where the validity of a statute of any state is drawn into question on the grounds of its being repugnant to the Constitution, treaties, or laws of the United States, or

(c) where any right, title, or immunity is specially set up or claimed under the Constitution, treaties, or statutes of the United States.

Rule 10 of the Rules of this Court states that the "character of reasons" which argue for consideration of a state court's decision include instances in which a state court of last resort has decided a federal question in a way that conflicts with the decision of another state court of last resort, or a United States Court of Appeals, or when a state court has decided an important question of federal law which has not been, but should be, settled by this Court, or has decided a federal question in a way that conflicts with applicable decisions of this Court.

The state court decision sought to be reviewed here by certiorari meets none of the criteria established in 28 U.S.C., § 1257, or in Rule 10 of the Rules of this Court, notwithstanding the passing references to the full faith and credit clause of the United States Constitution, Art. IV, Section 1, in the Court of Appeals' decision. (See App. p. 58a). In fact, the Petitioner effectively argues here the *opposite* of the position she presented in both the Circuit Court for Lee County, Florida, and in the Court of Appeals of Maryland. To illustrate this last point, it is helpful to review the Court of Appeals' articulation of the parties' positions. The Court summarized those positions as follows (App. 54a):

> This appeal is from a civil contempt order issued in a divorce action that began in December 1983. The Circuit Court for Montgomery County ordered the appellant, Marjorie H. Eckard (Marjorie), to sign a power of attorney authorizing her former husband, William E. Eckard (William), to execute in Marjorie's name and on her behalf the documents necessary for the sale and conveyance of two adjacent, unimproved lots in the City of Cape Coral, Florida. When Marjorie refused to do so she was imprisoned for contempt until released, pending the outcome of this appeal, on a writ of habeas corpus. Marjorie's principal contention is that the Maryland court had no jurisdiction to enter an order affecting the title to realty lying outside of Maryland. As we shall see below, for more than 200 years, courts of equity have issued, enforceable by contempt, the type of order presented here.

The Court further clarified Marjorie's and William's stance before them (App. 62a):

> Marjorie's principal argument is that the order directing her to execute the power of attorney authorizing William to act on her behalf in the sale and conveyance of realty in another state is beyond the subject matter jurisdiction of the circuit court. She views the order as attempting directly to affect the title to land in Florida. Relying almost exclusively on *Fall v. Eastin*, 215 U.S. 1, 30 S.Ct. 31, 54 L.Ed. 65 (1909), Marjorie asserts that Florida is not constitutionally obliged to give full faith and credit either to the order directing her to sign the power of attorney or to the December 1988 judgment, because a Maryland court has no power to affect the title to real estate in Florida. William replies that the court has in personam jurisdiction to order Marjorie to sign a power of attorney in Maryland. This done, it would not be the decree of the Maryland court that transfers the title to realty in Florida. That is to be accomplished by the deed to some presently unknown purchaser, signed by William for himself and on behalf of Marjorie, as her agent, appointed by her under coercion.
>
> From the standpoint of the historic power of equity, William is correct. Basically, this case involves the maxim that equity acts on the person. . . .

In short, the Petitioner argued in the Circuit Court for Montgomery County, Maryland and in the Maryland Court of Appeals that the Maryland court *did not* have jurisdiction to enter an Order requiring her to execute a Limited Power of Attorney authorizing the Respondent

to act for her as a means of carrying out the prior agreement of the parties and its Decree, or to hold her in contempt for her contumacious refusal to do so. Yet, in this Court the Petitioner now asserts that Florida should have given full faith and credit to the original Decree of the Maryland Court so that she would not have been induced to disobey the Montgomery County Circuit Court's Orders. The Petitioner attempts to explain this apparent contradiction at footnote 5, contained on page 14 of the Petition. But, Respondent respectfully submits that the rationale there advanced simply fails to accord with the reality disclosed by the contents of the Appendix to the Petition, including the Court of Appeals' decision.

However, even assuming consistency in the Petitioner's posture before the state courts and before this Court, it is beyond serious dispute that no federal question or issue of federal law was decided by the Maryland Court of Appeals.

By simply examining the decision of the Court of Appeals of Maryland in *Eckard v. Eckard, supra,* it is obvious that no federal treaty or statute is even mentioned. No conflict of state court decisions on a federal question or federal treaty or statute is described, analyzed, or resolved.

The Court of Appeals simply concluded that Marjorie was, in fact, and as a matter of state law, in contempt of the Order issued by the Circuit Court for Montgomery County, Maryland, requiring her to sign a Limited Power of Attorney to enable her ex-husband to proceed with the agreement reached between them in 1985.

Even the most determined legal analysis and exegesis of that opinion would fail to demonstrate that the Court of Appeals concluded either (a) that the full faith and credit clause applied to these circumstances and constituted the basis for the Court's decision holding Marjorie in contempt, or (b) that the full faith and credit clause did not apply to these circumstances, and for that reason Marjorie could be held in contempt. Instead, the Court cited *Fall v. Eastin*, 215 U.S. 1 (1909); *Massie v. Watts*, 6 Cranch 148, 3 L.Ed. 181 (1810); and *Penn v. Lord Baltimore*, 1 Res. Sen. 444, 27 Eng. Rep. 1132 (1750), in support of its fundamental conclusion: ". . . for more than 200 years, courts of equity have issued, enforceable by contempt, the type of order presented here."

The root of support for this conclusion is the case law over two centuries of history articulating the authority of courts of equity and the methods by which that authority might be enforced, not the full faith and credit clause of the United States Constitution. No explicit provision of a federal or state statute or constitution (other than those establishing the judicial system *ab initio*, and in general) was cited as the source of this holding. Maryland is not a civil law state, and neither the Constitution nor a federal statute was cited in the Opinion of the Maryland Court of Appeals as the cornerstone of its decision. The basis of that decision is stated at 333 Md. 531, 544, 636 A.2d 455, at 462 (App. 67a):

> The reasoning in *Fall v. Eastin* does not support Marjorie's position that the Circuit Court for Montgomery County had no subject matter jurisdiction to direct her to sign the power of attorney in Maryland, even if it would indirectly

affect property in Florida. *Fall v. Eastin* was not concerned with whether the Washington court could sanction the husband for contempt in failing to obey its decree ordering a conveyance to the wife. Indeed, *Fall v. Eastin* recognizes that obedience may be "compelled by proceedings in the nature of contempt, attachment or sequestration" to a decree directing transfer of legal title to foreign land through an instrument executed by a party who is personally before the court. *Id*, at 11, 30 S.Ct. at 8, 54 L.Ed. at 70.

These principles were restated by this court in *Donigan v. Donigan*, 208 Md. 511, 119 A.2d 430 (1956). *Fall v. Eastin*, among numerous other authorities, was cited for the general proposition that

> "by virtue of its power over a person properly before it, a court of equity may compel him to act in relation to property not within the jurisdiction, as it could in relation to property within the jurisdiction, but that this decrees do not operate directly on the property nor affect the title, but are only made effectual by directing some action on his part, such as the execution of conveyances or the execution or cancellation of other instruments or writings."

Id, at 522, 119 A.2d at 434.

This holding is wholly a matter of general state law and is entirely adequate to support the Court's judgment affirming the Order of Contempt. As a result, this Court's jurisdiction to review that decision is lacking. *Fox Film Corp. v. Muller*, 296 U.S. 207, 210 (1935).

This Court has held in numerous cases that it has no jurisdiction to review state court decisions based on non-federal grounds. *New Orleans v. New Orleans Water Works Co.*, 142 U.S. 79 (1891); *Adams v. Russell*, 229 U.S. 353 (1913); *Kenny v. Craven*, 215 U.S. 125 (1909); *Harris v. Reed*, 109 S.Ct. 1038, 103 L. Ed. 2d 308 (1989).

For jurisdictional purposes, it is not enough even if the record shows that a federal question was argued or presented to the state court for decision. It must appear that the decision of a federal question was necessary to a determination of the cause and that it was actually decided, or that the judgment, as rendered, could not have been given without deciding it. *Brown v. Atwell*, 92 U.S. 327 (1876); *First Nat. Bank v. Estherville*, 215 U.S. 341 (1910).

The Respondent does not wish to belabor the obvious here. However enlightening and useful it might be to revisit *Fall v. Eastin, supra*, as the Petitioner suggests, this case presents no justiciable dispute cognizable within the context of the boundaries of this Court's jurisdiction.

CONCLUSION

For the reasons asserted above, Respondent respectfully urges that the Petition for Writ of Certiorari be denied.

Respectfully submitted,

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